

THE NOTARY PUBLIC IN WEST VIRGINIA



Revised: 04/2016

Secretary of State

OUTLINE & TOPICS COVERED

■ What a notary is:

- Fundamentals
- Recent changes in laws

■ How to apply:

- Individual vs. Government
- Insurance requirements

■ After being commissioned:

- Rules to follow
- Stamps & making changes

■ Liability:

- Being careful & protecting yourself
- When/How to refuse a notarization

■ Responsibility:

- The Signer – who, when, and “how”
- Proper acknowledgement

■ Powers & Limitations:

- “What you can and can’t do”

■ Rarer situations/documents:

- Apostilles and Sovereign Citizens

■ Summary:

- Do’s & Don’ts
- Final thoughts/advice

■ Questions

NOTARY PUBLIC BASICS

- “An office of the people, holder of public trust...”
- The authority of a notary public is generally limited to acknowledging the signature of a person to a document, transaction, or to an oath.
- The role of the notary is to assure that the signature on a document is the true signature of the person he or she claims to be.
- The notary also is verifying that the document’s signer physically appeared before them at the time, and place, of the acknowledgement.
- A notary (or other authorized official) will affix their signature and stamp/seal to the document’s acknowledgement.
- Other notarial officers: Judges, County Clerks, Clerks of a Court, and Deputy Clerks

RECENT CHANGES IN NOTARY LAWS FOR WV

■ Adopting of “RULONA” – effective July 1, 2014

- Revised Uniform Law on Notarial Acts – §39-4-1

■ Highlights of new State Code

- Commission length shortened from 10 to 5 years
- New and renewing notaries required at least \$1000.00 in insurance coverage
- Can now charge up to \$5.00 per notarization
- E-notary commissions and laws enacted

■ Notaries commissioned prior to July 1, 2014 are “grandfathered in” until commission expires

- *“Do I have to get a bond?” – (FAQ*)*

THE APPLICATION PROCESS

- Still done via paper forms – must be official forms issued by Our Office
- Every new and renewing notary applicant will submit:
 - Complete, original Application for Appointment as a Notary Public (N1),
 - \$52.00 fee (State/local government applicants can send a letter requesting fee to be waived) and,
 - One form of sufficient & notary-specific insurance
 - Complete, original Notary Public Surety Bond (N-SB1 / M0050338.1) or,
 - Copy of signed Certification of Insurance Coverage Form for Notary Public (CIC)
- Application for E-Notarization Authorization – optional (N-2)
- National Notary Association (NNA)
 - legitimate company, “not a scam”
 - Will send a mailing ad/flier before renewal
 - Offer renewal packages – no package includes \$52.00 fee for the State Application
 - Not affiliated with Our Office (We get no compensation from them/their packages)



**ONCE YOU'VE BEEN
COMMISSIONED AS A NOTARY**

THE NOTARY STAMP

■ The Stamp

- Verify information on “stamp letter”
- Must get rubber stamp; embosser can be used IN ADDITION not on its own

■ “Where can I get my stamp made?” (FAQ*)

■ Contain the required information

- Must have everything in “stamp letter;” DOUBLE CHECK information on stamping device
- Must have a border; can’t be larger than 1 x 2 ½ inches
- No required color; must be dark enough to be seen on a copied/scanned image

■ Safety Precautions

- No longer require seal imprints; some do still send it in
- Keep in a safe/secure place; at address on stamp if possible
- Notify Our Office ASAP if stamp is lost or stolen



MAKING CHANGES TO NOTARY INFORMATION

- *“Am I allowed to change the information on my stamp?” - (FAQ*)*
- *“Yes, but...”*
 - All notaries can change the name as it appears on the stamp
 - Only individual notaries can change the address; if the fee is waived the stamp cannot be moved to another agency or private address
- **Notify Our Office ASAP if you’ve made a change**
 - State Code §39-4-22 requires a notary making a change to their name and/or address to notify Our Office within 30 days.
- **How to change**
 - Done via Name and/or Address Change Form (N-3) OR written letter
 - Free to make the change (hooray money); used to charge \$2.00 per change
- **New stamp must be made ASAP**
 - reflect current name/address & must be able to receive correspondence
 - *“Can I use my ‘old stamp’ in the meantime?” – (FAQ*)*

CHARGING FEES FOR NOTARIAL SERVICES

- **Prior to 07/01/2014:**

- Notaries could charge up to \$2.00 for a single notarial act
- Government notaries could not charge for a notarization

- **Under current State Code §39-4-30. *Maximum fees.***

- If a notary charges for a notarization, it must be recorded
- “The maximum fee in this state for notarization of each signature ... is \$5.00”
- “The maximum fee in this state for certification of a facsimile of a document, retaining a facsimile in the notary's file ... is \$5.00 for each eight and one-half by eleven inch page retained in the notary's file.”
- “The maximum fee in this state is \$5.00 for any other notarial act performed.”

- **Government agencies may charge for a notarization**

- Money must go back to the office/agency or general fund



GOVERNMENT NOTARIES

■ Prior to 07/01/2014:

- Government notaries could only notarize documents to be filed in that office
- Government notaries could only notarize on the premises of the stamp address
- Government notaries could not charge for a notarization

■ Under current State Code §39-4-31. *Government notaries public.*

- Government notaries can now notarize “other documents – private,” as long as it’s done on the premises of the stamp
- Government notaries can notarize outside of the office as long as it’s for official agency business
- Government agencies may charge for a notarization, but that \$ must go back into the office/office fund

THE NINE “COMMANDMENTS” OF NOTARIES

- Thou shalt personally know OR ID the signer.
- Thou shalt only notarize when the signer is physical present.
- A notarization shalt always contain a proper notary acknowledgement.
- Thou shalt not simply “stamp/sign.”
- Thou shalt only notarize in the Mountain State
- Thou shalt not notarize for a spouse
- Thou shalt not notarize a document to which thee is a party
- Thou shalt not notarize a document in which thy has any interest, financial or otherwise
- Thou shalt never let another use thy stamp

IDENTIFYING THE SIGNER

■ §39-4-7. Identification of individual.

(a) “A notarial officer has personal knowledge of the identity of an individual appearing...”

(b) “A notarial officer has satisfactory evidence of the identity of an individual appearing before the officer if the officer can identify the individual:

(1) By means of:

(A) A passport, driver's license or government issued non-driver identification card, which is current or expired not more than three years before performance of the notarial act; or

(B) Another form of government identification issued to an individual, which is current or expired not more than three years before performance of the notarial act, contains the signature or a photograph of the individual and is satisfactory to the officer; or,

(2) By a verification on oath or affirmation of a credible witness personally appearing before the officer and known to the officer or whom the officer can identify on the basis of a passport, driver's license or government issued non-driver identification card, which is current or expired not more than three years before performance of the notarial act.

PROPER ACKNOWLEDGEMENT

- Every time you use your stamp, make sure a complete/proper acknowledgement is included or added to the document.
- Acknowledgement Language:
 - Identify the jurisdiction in which the notarial act is performed – List State of West Virginia and the county where the notarial act took place, not what county your stamp address is in.
 - Contain the title of office of the notarial officer – usually if anyone other than a notary; and
 - If the notarial officer is a notary public, indicate the date of expiration, if any, of the officer's commission. “My commission expires:_____”
 - “Sets forth the actions of the notarial officer...”
- Sign and date
 - Sign your name as it appears on your seal (should match the name as it appears on the application filed with our office)

“What happened, where did it happen, and who was present?”

For an acknowledgement in an individual capacity:

State of

County of

This record was acknowledged before me on {date} by{Name(s) of individual(s)}

..... {Signature of notarial officer}

{Stamp}

..... {Title of office}

My commission expires:

For verification on oath or affirmation:

State of

County of

Signed and sworn to (or affirmed) before me on {date} by
.....{name(s) of individual(s) making statement}

..... {Signature of notarial officer}

{Stamp}

..... {Title of office}

My commission expires:



Se·gue ['segwā, 'sā-] - noun
*smooth transition from one topic
or section to the next*

i·ro·ny ['īrənē/] - noun
*the expression meaning by using
language that normally signifies the
opposite, typically for humorous
effect.*



LIABILITIES OF A NOTARY PUBLIC

- **Repercussions for document**

- An incorrect notarization could invalidate/void a document

- **There are documents you can and can't notarize**

- Directly on a government certificate – ex. DMV driving record
- On a certificate from another State – ex. Maryland Birth Certificate
- Federal forms – I-9 Employee Verification
- Someone's "mental capacity"

- **What a notarization actually "means"**

- You are not "defining" that document

- **Consequences for notary**

- A notary public is liable to the persons involved for all damages proximately caused by the notary's official misconduct.
- From Our Office...

- **Consequences for employer**

- The employer is liable if the notary was acting in the scope of employment or if the employer concealed the misconduct

CRIMINAL PENALTIES FOR MISCONDUCT

■ §39-4-33. Criminal penalties.

- a) A notary public who knowingly and willfully commits any official misconduct is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$5,000 or confined in jail not more than one year, or both fined and confined.
- b) A notary public who recklessly or negligently commits any official misconduct is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$1,000.
- c) Any person who acts as, or otherwise willfully impersonates, a notary public while not lawfully appointed and commissioned to perform notarial acts is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$5,000 or confined in jail not more than one year, or both fined and confined.
- d) Any person who unlawfully possesses a notary's official seal or any papers or copies relating to notarial acts, is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$1,000.
- e) For the purposes of this section, the term "official misconduct" means any act or conduct that:
 - (1) May result in the denial, refusal to renew, revocation, suspension or condition commission of a notary public pursuant to section twenty-one of this article; or
 - (2) Is prohibited by section twenty-three of this article.

PROTECT YOURSELF

- **Know the rules and code**

- Notary Handbook is your best friend – I don't get paid to say this...

- **Understand document/notarization**

- Aren't required to read the document, but understand before you acknowledge
- Make sure everyone signs where they need to sign,
- Foreign languages – document doesn't *have* to be in English, acknowledgement does

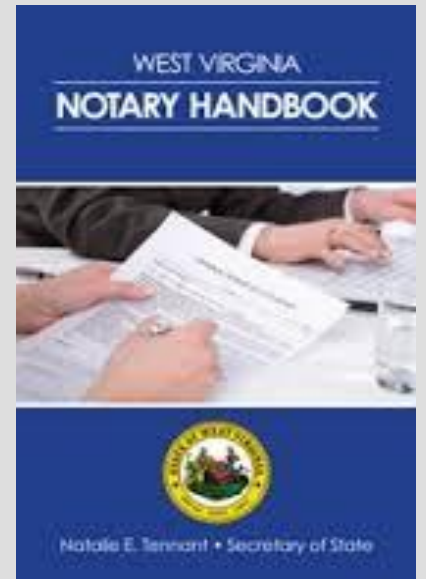
- **Put as much “distance” as you can for family members’ documents**
“Can I notarize for my (relative)?” – (FAQ)*

- **Insurance**

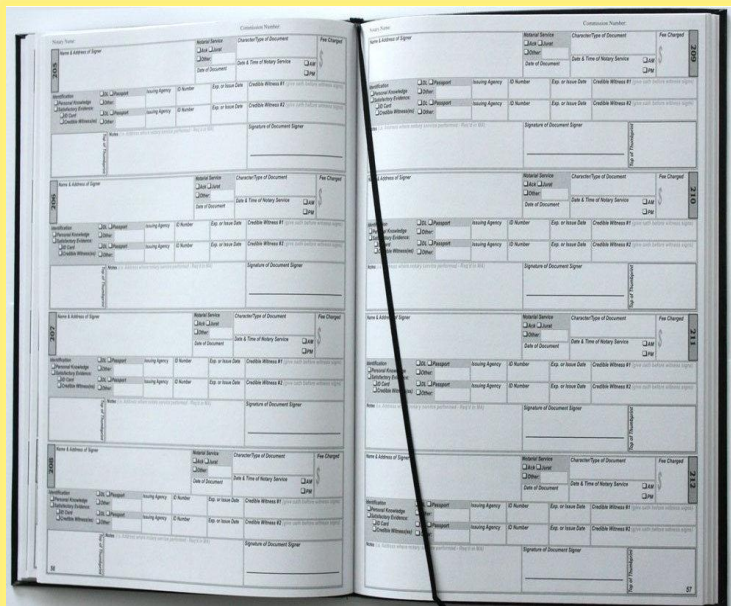
- **Keep a log book or journal of notarial acts**

- Not required, but beneficial

- **Refuse to notarize**



Journal of Notarial Acts



NOTARY JOURNAL

[illegible]

WHEN AND WHY TO REFUSE A NOTARIZATION

- **§39-4-8. Authority to refuse to perform notarial act.**

- (a) A notarial officer may refuse to perform a notarial act if the officer is not satisfied that:

- (1) The individual executing the record is competent or has the capacity to execute the record; or

- (2) The individual's signature is knowingly and voluntarily made.

- (b) A notarial officer may refuse to perform a notarial act unless refusal is prohibited by law other than this article*

- ***Cannot refuse for discriminatory reasons**

- **Refuse if the document doesn't need a notarization, if the signer isn't physically there, if you cannot ID the signer**

RESPONSIBILITIES

- Again, make sure the document requires a notary
- Affix a proper/complete acknowledgement if one is not built in. Attach an affidavit if necessary
- Make sure all parties required are present and sign for your notarization
- Determine that the signer is willing
 - How to tell?
- Determine if signer is capable
 - What to do if they're not?
- Trust your gut, Chances are, if it seems odd ... it probably is.
- Alert any necessary authorities.

POWERS AND LIMITATIONS

■ What you “can” do...

- Acknowledge a signer
- Give an oath
- Determine if a signature is genuine
- Certify that a copy of a document is true and accurate
- Attach an affidavit

■ What you “can’t” do

- Assist in drafting the record, give legal advice, otherwise practice law
- Act as an immigration consultant or represent a person in a judicial proceeding
- False or deceptive advertising
- Withhold access to a record

THINGS ONE MIGHT ENCOUNTER

■ Apostilles

- A document notarized by a notary or certified by any other acceptable officer, that is going out of the country will need an apostille from Our Office first
- Very important that the notarization is correct
- Usually highly time-sensitive
- Documents you might see: powers of attorney, bills of sale, will/testament, claiming international parcel.
- College and school documents are very common for those studying to/from abroad
 - THINK OF THE CHILDREN

■ “Sovereign Citizens”

- Individuals who don't believe in high ranking government, feel very negatively towards us “G-Men”
- Usually don't have or won't show government-issued ID
- Documents are usually aimed at serving US Officials or breaking ties with citizenship. – none of what they say is valid
- Can get “testy” or even violent when provoked/antagonized
- If it's a proper acknowledgement and they show government ID, complete the notarization – you aren't personally at risk over the document

ALWAYS REMEMBER!

- Personally know or properly ID the signer
- Only notarize a document when the signer is physically present in front of you.
- Affix a proper acknowledgment if there isn't one
- Never just “stamp and sign” a document.
- Do not notarize outside the State of West Virginia
- Do not notarize for a spouse
- Don't notarize any document in which you're a party (listed, witness, and NEVER NOTARIZE YOUR OWN SIGNATURE)
- Never notarize a document in which you could receive any beneficial interest, financial or otherwise.
- Never let someone else use your stamp.

Covering my bases in Modern English

QUESTIONS, COMMENTS, AND CONCERNS...

Physical and Mailing Address

West Virginia Secretary of State
Notary Division
1900 Kanawha Blvd. E.
Bldg. 1, Ste. 157-K
Charleston, WV 25305

Contact Information

Phone: (304) 558-800
Fax: (304) 558-8381
Email: notary@wvsos.com
Online Chat: M-F, 8:30a-5:00p

All of our forms, pdf of Notary Handbook, and e-copy of the State Code can be found under the notary section of our website: WWW.WVSOS.COM.

RESOURCES